Paper No. 15
ejs

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB AUG. 13,99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re TXI Operations, LP

Serial No. 75/151,118

William D. Jackson of Locke Purnell Rain Harrell for TXI Operations, LP

Caroline E. Wood, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney)

Before Cissel, Seeherman and Hohein, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

TXI Operations, LP has appealed from the final refusal of the Trademark Examining Attorney to register PRESSURE SEAL as a trademark for "well fluid additive granular materials, namely, expanded clay and shale aggregates as additives for well drilling, lost circulation, workover and

completion fluids."[1] Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of its goods.

Applicant and the Examining Attorney filed briefs on the case, and applicant filed a reply brief.[2]

A mark is merely descriptive, within the meaning of Section 2(e)(1), if, as applied to the goods or services in question, it describes an ingredient, quality, characteristic, function, feature, composition, purpose, attribute, use, etc. of such goods or services. **In re Engineering Systems Corp.**, 2 USPQ2d 1075 (TTAB 1986).

Obviously, the determination of whether PRESSURE SEAL is merely descriptive of the identified well fluid additive granular materials depends on a consideration of the goods. However, because the goods in question are technical items which are used, inter alia, in oil well production, we must first understand what the goods are and what they do.

Applicant has explained that its goods are well fluid additives which are "in the form of granular materials

---

[1] Application Serial No. 75/151,118, filed August 16, 1996, based on an asserted bona fide intention to use the mark in commerce.

[2] Applicant's motion that the Board accept its late-filed reply brief is granted, applicant having explained that its brief was filed three days late due to a docketing error.

which function in the nature of bridging agents or plugging agents in drilling and workover operations and the like." (Response filed August 25, 1997.) Specifically, they are indicated to be clay and shale aggregate additives for fluids which are injected into wells to prevent the fluids from migrating into the strata as the wells are being worked over or completed. (Reply brief, p. 2.) These granular materials act as a bridging agent to combat lost circulation and the like. (Response filed May 4, 1998.) Applicant has further explained that a bridging agent prevents the loss of fluid into high-pressure subterranean formations. However, applicant asserts that when the drilling or workover operation is completed and the well is placed on production, the bridging agent does not function to provide a seal against the flow of fluid from the high pressure formation into the well. Applicant further states that "it is a necessity for such lost circulation materials that they not form a seal against fluid flow under these circumstances of use," although applicant admits that "they may function to prevent the loss of fluid from the well into the formation during the drilling or workover operation." (Id.)

The Examining Attorney’s understanding is that applicant’s goods are used to create a seal to prevent the

seepage of well fluids into rock surrounding a well, and that the goods include bridging agents that function under pressure to seal porous rock to prevent leakage and to maintain pressure in a drilling hole.

It is clear from applicant's own explanation of its product that it acts as a pressure seal. Specifically, during the drilling of a well the granular materials prevent the loss of fluid into subterranean formations, i.e., they act as a seal. Moreover, it is because of the action of the subterranean pressures on the granular materials that they form this seal, i.e., the pressure causes the granular materials to form a seal within the well, or in other words, the material acts as a pressure seal.

We have no doubt that the purchasers of this product, who are obviously sophisticated and knowledgeable about such goods, would immediately, upon seeing the mark PRESSURE SEAL used in association with applicant's goods, understand that PRESSURE SEAL describes the fact that the granular materials form a pressure seal.

Applicant states that once the well is actually in use, the material does not provide a seal. This fact is irrelevant to our determination of registrability under Section 2(e)(1) of the Trademark Act. Applicant's goods

are used in connection with "well drilling, lost circulation, workover and completion fluids," i.e., in processes in connection with the drilling of a well, not for when a well is in use. During the drilling period, the goods identified in applicant's application are used to form a pressure seal. The term sought to be registered immediately conveys this fact.

Applicant has pointed out that the descriptiveness of a mark must be determined in its entirety, and not by its individual components. Thus, applicant argues that although the individual words "pressure" and "seal" "may have some descriptive characteristics" (brief, p. 5), the Examining Attorney has not made of record a dictionary definition for the composite term PRESSURE SEAL. However, as applicant itself admits, the fact that a composite term is not defined in the dictionary is not controlling on the question of registrability. In this case, the combination of the two words "pressure" and "seal" does not result in a new, arbitrary expression. On the contrary, the resulting combination "pressure seal" clearly refers to a seal created by pressure, and the relevant consumers would certainly understand this to be the meaning, since the term "pressure seal" is used within the industry. See, for example, "ASAP," Oct. 5, 1990 ("Filtration leaves a

residue, known as ’mudcake,’ on the borehole wall which eventually forms a pressure seal."); "Oil & Gas Journal," Dec. 3, 1984 ("This pack-off assembly provides the required pressure seal between the inside and outside of the drillpipe, while still allowing the logging cable to move freely."); and "Oil & Gas Journal," Oct. 12, 1981 ("The wellhead assembly provides the pressure seal between the tubing string and all outer casing.")

Although these excerpts are not references to the specific goods identified in applicant’s application, it is clear that the relevant class of consumers for applicant’s goods recognize the meaning of the term "pressure seal" and, upon seeing the designation PRESSURE SEAL used in connection with applicant’s identified goods, would immediately understand that applicant’s goods are used to form a seal as a result of pressure, i.e., that they make a pressure seal.

Accordingly, because PRESSURE SEAL would immediately and directly convey information about this significant characteristic of applicant’s identified goods, we find it to be merely descriptive of them.

Decision: The refusal of registration is affirmed.

R. F. Cissel

E. J. Seeherman

G. D. Hohein
Administrative Trademark Judges
Trademark Trial and Appeal Board